# In the Supreme Court
OF THE
# United States



OCTOBER TERM, 1968

No. ~~[illegible]~~ #2

EVELLE J. YOUNGER,
*Appellant,*

vs.

JOHN HARRIS, JR., et al.,
*Appellees.*

On Appeal from the United States District Court
for the Central District of California

## BRIEF FOR THE APPELLANT

THOMAS C. LYNCH,
Attorney General of the State of California,
ALBERT W. HARRIS, JR.,
Assistant Attorney General of the State of California,
CLIFFORD K. THOMPSON, JR.,
Deputy Attorney General of the State of California,
6000 State Building,
San Francisco, California 94102,
Telephone: (415) 557-0904,
EVELLE J. YOUNGER,
District Attorney of the County of Los Angeles,
DONALD A. MUSICH,
Deputy District Attorney of the County of Los Angeles,
*Attorneys for Appellant.*

## Subject Index

## Table of Authorities Cited

### Cases

## Texts



## Constitutions

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1968

No. 163

EVELLE J. YOUNGER,
*Appellant,*

vs.

JOHN HARRIS, JR., et al.,
*Appellees.*

**On Appeal from the United States District Court for the Central District of California**

## BRIEF FOR THE APPELLANT

### OPINION BELOW

The opinion of the United States District Court for the Central District of California is reported in 281 F.Supp. 507 and is reprinted in the Appendix.

## JURISDICTION

Jurisdiction is conferred on this Court by Title 28, United States Code, section 1253.

The judgment of the United States District Court for the Central District of California, by a three-judge panel, was entered on March 11, 1968. A timely notice of appeal was filed in this Court on April 9, 1968. Probable jurisdiction was noted on January 13, 1969, in 37 U.S. Law Week 3247.

---

## QUESTIONS PRESENTED

1. Whether the District Court exceeded its jurisdiction in reviewing *all* proscriptive sections of the California Criminal Syndicalism Act when but a single section was properly before the court.

2. Whether contrary to this Court's holding in *Whitney v. California*, 274 U.S. 357 (1927), and notwithstanding limiting decisions by our state courts, all provisions of the California Criminal Syndicalism Act are, on their face, unconstitutionally vague and overbroad.

3. Whether the Smith Act, 18 U.S.C. § 2385, preempts the California Criminal Syndicalism Act.

4. Whether the federal anti-injunction statute, 28 U.S.C. § 2283, barred the District Court from enjoining a state court criminal proceeding pending against appellee Harris.

## STATUTES INVOLVED

California Penal Code

Section 11400.

"Criminal syndicalism" as used in this article means any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning wilful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change.

Section 11401.

Any person who:

1. By spoken or written words or personal conduct advocates, teaches or aids and abets criminal syndicalism or the duty, necessity or propriety of committing crime, sabotage, violence or any unlawful method of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change; or

2. Wilfully and deliberately by spoken or written words justifies or attempts to justify criminal syndicalism or the commission or attempt to commit crime, sabotage, violence or unlawful methods of terrorism with intent to approve, advocate or further the doctrine of criminal syndicalism; or

3. Prints, publishes, edits, issues or circulates or publicly displays any book, paper, pamphlet, document, poster or written or printed matter in any other form, containing or carrying written or

printed advocacy, teaching, or aid and abetment of, or advising, criminal syndicalism; or

4. Organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage of persons organized or assembled to advocate, teach or aid and abet criminal syndicalism; or

5. Wilfully by personal act or conduct, practices or commits any act advised, advocated, taught or aided and abetted by the doctrine or precept of criminal syndicalism, with intent to accomplish a change in industrial ownership or control, or effecting any political change;

Is guilty of a felony and punishable by imprisonment in the state prison not less than one nor more than 14 years.

Section 11402.

If for any reason any section, clause or provision of this article shall by any court be held unconstitutional, the Legislature hereby declares that, irrespective of the unconstitutionality so determined of such section, clause or provision, it would have enacted and made the law of this State all other sections, clauses and provisions of this article.

Title 18, United States Code, section 2385.

Whoever knowingly or wilfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession theref, or the government of any political subdivision therein, by force or violence,

or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms "organizes" and "organize," with respect to any society, group, or assembly of persons, including the re-

cruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

Title 28, United States Code, section 2283.

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Title 42, United States Code, section 42.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

---

**STATEMENT**

On September 20, 1966, the Grand Jury of Los Angeles County indicted appellee Harris for distributing literature advocating terrorism and advising commission of unlawful acts of force and violence as a means of effecting political change and new industrial ownership, contrary to California Penal Code sections 11400 and 11401(3). The acts denounced allegedly occurred on May 25 and 26, 1966, the occasion of the County Coroner's inquest into the death of Leonard

Deadwyler, killed during a period when tensions generated by the Watts riot pervaded the community.

Harris was arraigned in Los Angeles Superior Court. On December 1, 1966, the trial court denied his motion to dismiss the charges and overruled a demurrer to the indictment. Harris unsuccessfully petitioned for a writ of prohibition in the Court of Appeal for the State of California and in the Supreme Court of California, alleging the unconstitutionality of the statute. The matter was set for trial.

On July 27, 1967, Harris filed in the United States District Court for the Central District of California a complaint under Title 28, United States Code sections 1331 and 1343(3), and Title 42, United States Code section 1983, alleging the unconstitutionality of the Criminal Syndicalism Act, and seeking injunctive relief. Harris was joined by appellees Dan and Hirsch, who alleged that the prosecution pending against Harris inhibited their advocacy of the political program of the Progressive Labor Party, and by appellee Broslawsky, who alleged uncertainty as to whether the Act prohibited him from teaching his students about the doctrines of economist Karl Marx.

The District Court on August 16, 1967, issued its order convening a three-judge court pursuant to Title 28, United States Code sections 2281 and 2284. The matter was heard on October 27, 1967.

Consequently the three-judge court had before it only the text of sections 11400 and 11401(3). The record does not disclose the nature of the conduct allegedly engaged in by plaintiff Harris, whether his

conduct was constitutionally protected, the social context or matrix of his action, whether there was in fact a clear and present danger of violence or terrorism, or indeed any of the facts or circumstances which were the basis for the criminal charge.

The other appellees—Dan, Hirsch and Broslawsky—were not under indictment and sought to attack the portions of the Criminal Syndicalism Act not involved in the Harris prosecution on the basis of their allegations that the existence of the California law in effect "chilled" the exercise of their rights under the First Amendment. No proof was ever presented of this claim. Even the three-judge court acknowledged that, ". . . our decision in no way stems from any apprehension of our own that plaintiffs Dan, Hirsch or Broslawsky stand in any danger of prosecution by the respondent, the present District Attorney of Los Angeles County, because of the activities that they ascribed to themselves in the complaint. . . ." *Harris v. Younger,* 281 F.Supp. 507, 516 (C.D. Cal. 1968).

Nevertheless, while it was undisputed that the plaintiff Harris was being prosecuted under only one section of the Act and the other plaintiffs were in no danger of prosecution under the remaining sections, the three-judge court on March 11, 1968, proceeded to hold unconstitutional all of the provisions of the California Criminal Syndicalism Act. The court further enjoined appellant Younger from further prosecuting Harris under the Act. It did this without knowledge of all the facts and circumstances which

were the basis for the prosecution. It did this without recognition of, much less deference to, the judicial gloss attached to the law by state courts in the past fifty years.

Appellant filed notice of appeal on April 9, 1968. The appeal was docketed on June 6, 1968. On August 19, 1968, appellees moved to dismiss or affirm. This Court noted probable jurisdiction on January 13, 1969.

---

**SUMMARY OF ARGUMENT**

The judgment declaring the California Criminal Syndicalism Act unconstitutional on its face should be reversed. Limiting state court decisions make it clear that the Act does not suffer from the constitutional defects of vagueness and overbreadth.

Further, sections 11401(1), 11401(2), 11401(4), and 11401(5) are not properly before the federal courts, no case or controversy having arisen under these provisions.

The Smith Act, 18 U.S.C. § 2385, does not preempt the California Criminal Syndicalism Act in light of *Uphaus v. Wyman,* 360 U.S. 72 (1959). Moreover, as the purpose and scope of the federal and state statutes do not conflict or coincide, federal preemption of the state legislation may not be implied.

Finally, the order issued by the District Court enjoining appellant Younger from proceeding with the pending criminal prosecution of appellee Harris violates the federal anti-injunction statute, 28 U.S.C. § 2283.

## ARGUMENT

### I

### THE CALIFORNIA CRIMINAL SYNDICALISM ACT IS NOT, IN ALL OF ITS PROVISIONS, UNCONSTITUTIONALLY VAGUE OR OVERBROAD.

#### A. Background.

The California Syndicalism Act was enacted as an urgency measure in 1919, when active radical minorities threatened the stability of the existing political and social structure by force and violence. Cal. Stats. 1919, ch. 288, p. 281. The bulk of syndicalism prosecutions were brought within the next five years. The statute rarely was invoked in the 1930's, and, apparently, lay dormant thereafter until now.

The District Court's treatment of the Act indicates that it may have regarded the statute as an historical vestige of the 1920's, a dead letter law no longer vindicating a compelling State interest. One commentator has suggested that a finding of vagueness may evidence a judicial view that the statute voided does not protect a vital interest. 81 Harv. L. Rev. 110, 168 n. 20 (1967).

It is our misfortune that the Criminal Syndicalism Act is not an anachronism. The circumstances which preceded its enactment plague us once again. Politically motivated acts of violence and sabotage threaten to become commonplace; militant organizations and anarchists mount violent attacks against California's citizens and institutions with increasing frequency. In 1965 our Legislature deemed it necessary to forbid paramilitary organizations training in guerrilla war-

fare and sabotage to assemble for the purpose of practicing with weapons. Cal. Pen. Code § 11460.

We believe that the State has a no less compelling interest in regulating conduct under the Criminal Syndicalism Act than the federal government has in prohibiting certain activities under the Smith Act. If the overthrow of the national government is a greater evil than the acts of violence which the state law seeks to prevent, experience demonstrates that the former danger is far less likely to be realized than is the latter. The State deserves the chance to prove that the acts condemned by our statute create a clear and present danger of violence, or indeed, resulted in violence.

The Syndicalism Act is directed at three evils: violent overthrow of state and municipal governments; displacement of the peaceful democratic process by collective acts of terrorism by anarchists or revolutionaries and reciprocal acts of violence by defenders of the status quo; individual acts of violence directed toward persons who represent local government and individual acts of sabotage against private industry.

In passing upon our statute this Court should be apprised that there now exist within this State militant organizations whose purpose is to accomplish the first two evils and whose practice is to promote the third. They have destroyed public and private property, have attempted to destroy political and educational institutions, and have assassinated persons assigned to the task of preserving order. That the

Court may fully appreciate our predicament we give space here to three such militant groups, extremists of the left and right, apostles of violence both black and white.

"The Black Panther" is the newspaper of the Black Panther Party for Self-Defense. On November 16, 1968, "The Black Panther" offered a full page of detailed instructions on how to make "Grenades and Bombs: Anti-Property and Anti-Personnel." A copy of that article is appended to our brief.

Reproduced also is a photograph of San Francisco police officer, Michael O'Brien, captioned "Wanted Dead for Murder." His picture appeared in the Panther periodical on October 12 and 19, 1968, November 2, 1968, and on January 25, 1969. Officer O'Brien received a death threat on February 11, 1969. San Francisco Examiner, Wed., Feb. 12, 1969, p. 7, col. 1.

A Black Panther cartoon depicting a wounded police officer and bearing the caption "This pig will be back—Don't let this happen—Shoot to kill," is included.[1] Lest this be thought advocacy of abstract doctrine, it should be noted that Panther Defense Minister Huey P. Newton recently was convicted of slaying a police officer in Oakland, California. Earlier, armed members of the Black Panther Party appeared uninvited on the floor of our Legislature. Six Black Panthers are to stand trial presently for allegedly ambushing Oakland police officers. Recently, on the

[1]Strikingly similar rhetoric by anarchists preceded the Haymarket Square riot, where a large number of policemen were killed. *The Anarchists' Case,* 12 N.E. 865, 880-881 (Ill. 1887).

U.C.L.A. campus, two Panthers were shot and killed, allegedly by members of the rival militant organization, US.

Students for a Democratic Society, SDS, is a white organization. Reprinted here is a circular intended for SDS members, entitled "What Must We Do Now? An Argument for Sabotage As the Next Logical Step Toward Obstruction and Disruption of the U. S. War Machine." This position paper tells how to construct and use bombs. Bomb diagrams have been deleted from the reprint.

Between February 25 and October 3, 1968, the following bomb incidents occurred in the San Francisco Bay Area: eight public utility towers, substations and telephone cables were bombed; the Berkeley, California, Draft Board was bombed; two bombs exploded on the campus of the University of California at Berkeley, one partially destroying the United States Navy ROTC building; three business and industrial sites were bombed; bombs exploded in the Oakland Police Department Building and in the Alameda County Courthouse.

In February of 1969, nine persons were arrested on the San Francisco peninsula. Charges of conspiracy, criminal syndicalism, possession of illegal weapons, and possession of explosives were lodged against them. The group was linked to some of the thirty-one bombings, shootings, and acts of sabotage which occurred in the mid-peninsula region between October 15, 1968, and January 30, 1969. In the presence of an undercover officer, certain of the defendants conspired to

bomb and tear gas persons attending a Mao-Tse-Tung class at a local church. See San Francisco Examiner, Sunday, February 16, 1969, p. 1, cols. 3-8.

Discovered in the conspirators' homes were large quantities of firearms and ammunition, grenades, bombs, gun powder and other ingredients for explosives, and American Nazi Party literature. A dated edition of the Nazi periodical "The Storm Trooper" was found, featuring these appeals to reason: "When They Burn the Flag . . . IT'S TIME FOR *VIOLENCE,*" and "TERRORISM the only answer to TERRORISM," specifically condemning the Black Panthers. This material is reproduced and appended. Other items found included a poster exhorting "White People! Fight Against THE BLACK PLAGUE, EVERY 30 MINUTES . . . A WOMAN IS RAPED SOMEWHERE IN THE U.S.A. WHITE MAN! WHAT DOES IT TAKE TO MAKE YOU FIGHT? JOIN THE AMERICAN NAZIS!"

It is obvious that hate literature necessarily lends an aura of legitimacy to violence and reinforces the distorted perceptions of sick minds. Less obvious, usually, is the immediate causal connection between incitement and action. To deny that connection, however, is to defy common sense and experience. The First Amendment was intended as a shield not a sword; but in warring upon one another extremists left and right have learned that speech is, quite literally, a lethal weapon. The Criminal Syndicalism Act, properly construed, is a much needed protective measure. The State must be afforded the opportunity

to show that incitements like those recited create a clear and present danger of violent action.

**B. The California Criminal Syndicalism Act, as construed by our state courts, is not unconstitutionally vague or overbroad.**

In *Whitney v. California,* 274 U.S. 357 (1927), this Court reviewed the California Criminal Syndicalism Act and rejected the very contentions sustained here by the District Court: that the Act denied procedural due process by failing to supply adequate notice of the conduct it condemned; that the Act denied substantive due process by impermissibly regulating conduct falling under the protective mantle of the First Amendment. *Id.* at 368, 371.

Since *Whitney,* the District Court observed, this Court has tested statutes regulating conduct in the area of the First Amendment by increasingly rigorous standards of clarity and precision. For this reason, the court felt obliged to consider anew the precise claims raised in *Whitney.* We accept this premise but take grave exception to the manner in which the District Court approached its task.

We urge that the California Criminal Syndicalism Act, as construed by our state courts and by this Court, is constitutional.

In construing the Syndicalism Act, the District Court completely ignored several decisions by California appellate courts limiting and clarifying the terms of the statute. This is difficult to understand, since federal courts are bound by a state court's interpretation of its own law.

Penal Code section 11400 defines "criminal syndicalism" as any doctrine or precept advocating, teaching, or aiding and abetting the commission of crime, wilful and malicious damage to physical property, or unlawful acts of force and violence or unlawful methods of terrorism as a means of effecting political change or new industrial ownership.

Penal Code section 11401(1) condemns "Any person who . . . advocates, teaches or aids and abets criminal syndicalism or the . . . propriety of committing . . . violence . . . as a means of accomplishing a change in industrial ownership or control or effecting any political change . . . ."

The District Court faulted section 11401(1) on related grounds of vagueness and overbreadth. Since "advocacy" is prohibited, teaching *about* criminal syndicalism might be punishable, the court reasoned. And

> "even if the Act were to be construed as including only the type of teaching that involves advocacy, it is still overbroad in its prohibition, because the advocacy condemned is not limited to the 'Action now!!' variety." *Harris v. Younger, supra,* 513.

Aside from demanding that the requirement of a clear and present danger appear upon the face of the statute, a novel concept, the "Action now!!" test blithely ignores that

> "The essence of the *Dennis* holding was that indoctrination of a group in preparation for future violent action, as well as exhortation to

immediate action . . ." may, under limited circumstances, be proscribed. *Yates v. United States,* 354 U.S. 298, 321 (1957). See *Dennis v. United States,* 341 U.S. 494 (1951).

More disconcerting, however, is the District Court's failure to acknowledge that the California Supreme Court has, in effect, limited the reach of our statute to advocacy of immediate action. In *Danskin v. San Diego Unified School Dist.,* 28 Cal.2d 536, 171 P.2d 885, 891 (1946), Justice Traynor noted that

> "The Criminal Syndicalism Act can . . . be applied only when there is imminent danger that the advocacy of the doctrines it seeks to prohibit will give rise to the evils that the state may prevent."

From this limiting construction it is clear that the Act proscribes only advocacy directed at promoting imminent unlawful action. *Danskin,* by limiting the statute, clarifies any vague language and eliminates overbreadth. *People v. Malley,* 49 Cal.App. 597, 611, 194 Pac. 48, 54 (1920), discussed within, confirms that the Act extends only to advocacy intended to produce illegal acts.

Thus construed, the Criminal Syndicalism Act parallels the Smith Act, and is constitutional under *Dennis v. United States, supra,* and *Yates v. United States, supra,* which establish that intentional advocacy of unlawful action is not protected speech. The Smith Act and the California law must stand or fall together.

The District Court found unconstitutionally vagu the terms "aid" and "abet," as used in sectio 11401(1). Again, our state courts have supplied th defect assigned below. "Aid" and "abet" have an es tablished meaning: " 'to instigate, encourage, pro mote, or aid with guilty knowledge of the wrongfu purpose of the perpetrator.' " *People v. Camarillo*, 26 A.C.A. 555, 565, 72 Cal.Rptr. 296, 301 (1968). *Dauskin* and *Camarillo* make untenable the District Court's suggestion that the terms "aid" and "abet" would encompass innocent influencing, counseling, or advis ing. Surely, since 1872, when the terms "aid" and "abet" appeared in our Penal Code, they have acquired a clearly ascertainable meaning.

Even without the judicial gloss supplied by our state courts, the District Court should have inter preted the Criminal Syndicalism Act so as to pre serve its constitutionality in light of intervening decisions by this Court. The District Court had no different responsibility than the Court of Appeals of New York had when confronted with a state criminal anarchy statute unconstitutional as previously con strued. *People v. Epton*, 281 N.Y.S.2d 9, 227 N.E.2d 829 (1967), *cert denied*, 390 U.S. 29, 976 (1968)

State courts recognize a duty to construe state statutes so as to preserve their constitutionality. See, *e.g., City of Los Angeles v. Belridge Oil Co.*, 48 Cal. 2d 320, 324, 309 P.2d 417, 419 (1957). The highest court of New York observed this principle recently in upholding that State's criminal anarchy statute. *People v. Epton, supra.* Federal courts will, when

possible, supply constitutionally acceptable meaning to the terms of federal statutes. *American Communications Assn. v. Douds*, 339 U.S. 283, 407 (1950). This Court adhered to that rule in upholding the Smith Act, in *Dennis v. United States*, 341 U.S. 494 (1951), *Yates v. United States*, 354 U.S. 298 (1957), and *Scales v. United States*, 367 U.S. 203 (1961).

The recent decline of the abstention doctrine in First Amendment cases, *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Zwickler v. Koota*, 389 U.S. 241 (1967), *Cameron v. Johnson*, 390 U.S. 611 (1968), coincides with the emergent practice of federal courts passing upon state statutes in declaratory judgment actions. State courts are thus denied the initial opportunity to preserve the constitutionality of state statutes while federal courts are forced to rule on the validity of the broadest possible literal applications of state laws. This development places new and severe tensions upon our federal system.[2] Federal courts should now recognize an obligation to construe state statutes so as to save them from valid constitutional objections, on the assumption that the state courts would do no less. Such a rule is implicit in this Court's language in *Fox v. Washington*, 236 U.S. 273, 277 (1915):

> "So far as statutes fairly may be construed in such a way as to avoid doubtful constitutional questions they should be so construed . . .; and it

[2]The District Court commented that plaintiffs did not ignore the state courts. *Harris v. Younger*, *supra*, 510. Plaintiffs Dan. Hirsch. and Broslawsky did not challenge the Syndicalism Act in California courts.

> is to be presumed that state laws will be construed in that way by the state courts."

The principle we suggest was not followed below. In *Dennis v. United States, supra; Yates v. United States, supra,* and *Scales v. United States, supra,* this Court construed the Smith Act so as to uphold its constitutionality. The Smith Act closely parallels the California Syndicalism Act, both statutes finding common ancestry in the New York Criminal Anarchy Act. *Yates v. United States, supra,* 307-309; *Dennis v. United States, supra,* 562 n.2 (concurring opinion of Mr. Justice Jackson). But the District Court chose to ignore the example of *Dennis, Yates,* and *Scales,* on the theory that those cases were rejected by *Keyishian v. Board of Regents,* 385 U.S. 589 (1967). In misreading *Keyishian,* the District Court failed to discharge its burden under the federal system.

The only provisions of the Syndicalism Act properly at issue are Penal Code section 11400, defining criminal syndicalism, and section 11401(3), which punishes one who "Prints, publishes . . . circulates or publicly displays any . . . paper . . . containing . . . advocacy, teaching, or aid and abetment of, or advising criminal syndicalism . . ." The District Court found it "hard to see" how this section might be interpreted without subjecting to prosecution magazine editors, sidewalk news vendors, and other persons whose conduct is protected by the First Amendment.

Again, the District Court's difficulty stems from its failure to consider a relevant state court decision.

Penal Code section 11401(3) was construed in *People v. Malley,* 49 Cal.App. 597, 194 Pac. 48 (1920). The Court of Appeal said

> "We are satisfied from the record that the defendant distributed the literature under his control and in his possession with full understanding of its nature; and this, of itself, furnished a ground for attributing to him an intent to bring about, and for finding that he was thereby attempting to bring about, any and all such consequences as might reasonably be anticipated from its distribution." *Id.* at 611, 194 Pac. at 54.

*Malley* establishes that to come within the proscription of the statute, (1) the accused must fully understand the nature of the material he distributes, contrast *Smith v. California,* 361 U.S. 147 (1959), and (2) the accused must intend to bring about the unlawful consequences reasonably attributable to his act of distribution. *Malley* further recognized that the section could be applied only to acts posing a clear and present danger. *Id.* at 612, 194 Pac. at 54.

This interpretation brings section 11401(3) into conformance with the parallel provision in its federal analogue, the Smith Act, apparently approved recently in *Keyishian v. Board of Regents,* 385 U.S. 589, 600 n.8 (1967).

Penal Code section 11401(4) makes unlawful organizing, or knowing membership in, an organization formed to advocate, teach, or aid and abet criminal syndicalism. None of the appellees have been charged under this section; none shows that he is inhibited

from organizing or joining any group by virtue of this section.

The District Court found that section 11401(4) permitted prosecution on the basis of membership alone and was, therefore, unconstitutional in light of *Aptheker v. Secretary of State,* 378 U.S. 500 (1964); *Elfbrandt v. Russell,* 384 U.S. 11 (1966); *Keyishian v. Board of Regents,* 385 U.S. 589 (1967), and *United States v. Robel,* 389 U.S. 258 (1967). The District Court ignored the fact that section 11401(4) condemns separate crimes: organizing and knowing membership. One cannot organize without knowledge of organizational purposes and an intention to further those purposes. Thus, the elements of knowledge and purpose, read into virtually identical language in the Smith Act in *Scales,* inhere in the crime of organizing denounced in section 11401(4). The District Court erred in concluding that if the membership clause of section 11401(4) failed, the organization clause, made severable by section 11402, was also unconstitutional.

In *Whitney v. California,* 274 U.S. 357 (1927), the Court passed upon section 11401(4), holding that "The language of § 2, subd. 4, of the Act, under which the plaintiff in error was convicted, is clear; the definition of 'criminal syndicalism' specific." *Id.* at 368. The Court added that

> "The Act, plainly, meets the essential requirement of due process that a penal statute be 'sufficiently explicit to inform those who are subject to it, what conduct on their part will render them liable to its penalties,' and be couched in terms that are not 'so vague that men of common in-

> telligence must necessarily guess at its meaning and differ as to its application.' *Connally v. General Construction Co.*, 269 U.S. 385, 391." *Ibid.*

It may be noted that Justices Holmes and Brandeis, concurring in *Whitney*, agreed with the majority that the statute was valid.

In *Scales v. United States*, 367 U.S. 203 (1961), this Court interpreted the membership clause of the Smith Act to penalize only active members having guilty knowledge and intent. *Id.* at 221-222. Thus narrowed, the statute was held constitutional. That interpretation was possible, *Aptheker* explains, *Id.* at 511 n.9, because the Smith Act explicitly required that a defendant must know of the organization's illegal purposes. No parallel provision existed in sections 5 and 6 of the Subversive Activities Control Act, construed in *Aptheker* and *Robel*. No similar provision is written into the Syndicalism Act. However, California courts have consistently held that "knowledge of the purposes of the organization is an essential element of the crime . . ." denounced in section 11401(4). *People v. Flanagan*, 65 Cal.App. 268, 276, 223 Pac. 1014, 1017 (1924). *Accord, People v. Roe*, 58 Cal.App. 690, 703, 209 Pac. 381, 387 (1922); *People v. Powell*, 71 Cal.App. 500, 504-505, 236 Pac. 311, 312 (1925); *People v. Johansen*, 66 Cal.App. 343, 348, 226 Pac. 634, 636 (1924); *People v. Steelik*, 187 Cal. 361, 374, 203 Pac. 78, 83 (1921). Therefore, *Aptheker* and *Robel* are inapposite and section 11401 (4) is not different from the membership clause upheld in *Scales*.

The District Court, omitting any mention of *Scales* in its discussion of section 11401(4), relied heavily upon *Elfbrandt* and *Keyishian*.[3] Those were loyalty oath cases, not prosecutions under a criminal statute. *Elfbrandt* involved a law designed to expel subversive persons from positions of state employment. Significantly, the Arizona law there construed had twice been before the state supreme court, once on remand from this Court for consideration in light of *Baggett v. Bullitt*, 377 U.S. 360 (1964). The Arizona Supreme Court held that the state's loyalty oath was not afflicted with unconstitutional uncertainties. This Court disagreed, and being bound by the state court interpretation, was forced to hold the statute unconstitutional. *Keyishian* involved a statutory scheme made vague by virtue of its complexity alone. The New York statutes sought to regulate speech in academic circles, where First Amendment freedoms require the greatest protection. Thus, *Elfbrandt* and *Keyishian* are readily distinguished from our case.

*Scales* may be reconciled with *Elfbrandt* and *Keyishian* in two ways. First, we might assume that *Scales* is overruled. Neither subsequent decision, however, purports to dispatch *Scales*. Indeed, the *Scales* approach was utilized recently in *Samuels v. Mackell*, 288 F.Supp. 348, 353 n.5 (S.D.N.Y. 1968). The alternative explanation is that a federal statute regulating freedom of association will be so inter-

[3]In *Elfbrandt* the scienter requirement was written into the statute; in *Keyishian* the Court reviewed a statute upheld earlier in *Adler v. Board of Education*, 342 U.S. 485 (1952), in view of a judicially imposed requirement of knowledge. *Id.* at 494.

preted as to remove constitutional flaws, as in *Scales*, whereas similar state statutes will be construed strictly, as in *Elfbrandt* and *Keyishian*.

The difference in the Court's approach to analogous federal and state provisions, it has been suggested, reflects a view that the federal government has the more compelling interest in regulating associative conduct. 81 Harv. L. Rev. 110, 168 n.20 (1967). That notion, however, was rejected in *Uphaus v. Wyman*, 360 U.S. 72 (1959).

The Syndicalism Act should be construed as was the Smith Act to proscribe only knowing membership in an organization with specific intent to further its unlawful aims. California's interest here is certainly *no less* compelling that that of the federal government. Further, we believe that when, by declining to apply the abstention doctrine, federal courts deny state courts the opportunity of construing state statutes in conformity with constitutional requirements, federal courts have a duty to construe state laws so as to uphold them. It runs contrary to our concept of federalism that a state statute should survive or fail according to whether it is first tested in a state or federal court. *Compare People v. Epton, supra and Samuels v. Mackell, supra, with Harris v. Younger, supra.*

Penal Code section 11401(2) is not properly before the Court, as appellee Harris was charged under a different section, and appellees Dan, Hirsch, and Broslawsky were not in danger of being charged under any section. We note, however, that section

11401(2) is couched in substantially the same language as New York Penal Law section 161(3), part of the criminal anarchy law upheld in *People v. Epton, supra,* and in *Samuels v. Mackell, supra.*

Similarly, section 11401(5) is not before this Court. This section applies to the violent and unlawful acts specified in section 11400, defining criminal syndicalism. The District Court properly conceded that section 11401(5) reaches "conduct amounting to force or violence or incitement that properly may be punished, and which conceivably may not be covered by other criminal statutes." *Harris v. Younger, supra* 516. This section clearly punishes conduct not speech. *Cf. Cox v. Louisiana,* 379 U.S. 559, 564 (1965). It was held vague by the District Court under the standard for certainty articulated in *Lanzetta v. New Jersey,* 396 U.S. 451, 453 (1939). *Lanzetta,* however, does not posit a test different from that announced in *Connally v. General Construction Co.,* 269 U.S. 385, 391 (1926). In *Whitney* this Court held the Criminal Syndicalism Act valid under *Connally.* We submit that the District Court erred in holding section 11401(5) unconstitutional.

---

## II

### THE DISTRICT COURT EXCEEDED ITS JURISDICTION BY REVIEWING PROVISIONS OF THE CALIFORNIA CRIMINAL SYNDICALISM ACT NOT PROPERLY BEFORE IT.

Appellee Harris was charged with violating only subdivision 3 of California Penal Code section 11401. The separate clauses and provisions of section 11401

are of discrete efficacy and are declared severable in Penal Code section 11402. The District Court, however, reviewed and declared unconstitutional all subdivisions of section 11401.

The District Court lacked power to review subdivisions 1, 2, 4 and 5 of Section 11401. The joining of appellees Dan, Hirsch, and Broslawsky was an obvious attempt to confer upon the District Court jurisdiction to review these provisions under the Declaratory Judgment Act, 28 U.S.C. § 2201. That attempt must be held a failure.

A declaratory judgment may be entered only when there is presented a case or controversy in the constitutional sense. *Public Service Comm'n v. Wycoff Co.,* 344 U.S. 237, 242 (1952).

> "Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Casualty Co. v. Pacific Co.,* 312 U.S. 270, 273 (1941). See *Aetna Life Ins. Co. v. Haworth,* 300 U.S. 227, 239-241 (1937).
>
> "For a declaratory judgment action to be maintained, 'there must be at least the ripening seeds of * * * a controversy, that is, a state of facts indicating threatened litigation, in the immediate future, which seems unavoidable, concerning the respective legal rights of the parties.'" *Remington Products Corp. v. American Aerovap,* 97 F. Supp. 644, 646-647 (S.D.N.Y. 1951).

As the District Court accurately noted, Dan, Hirsch, and Broslawsky stood in no danger of prosecution under any subdivision of section 11401. *Harris v. Younger,* 281 F.Supp. 507, 516 (1968). If the threat of immediate prosecution is not the *sine qua non* of an actual controversy, certainly no controversy exists in the constitutional sense when there does not appear even remote danger of prosecution. *Cf. Poe v. Ullman,* 367 U.S. 497, 504 (1961). Since appellees Dan, Hirsch, and Broslawsky failed to present a "controversy" within the meaning of either 28 U.S.C. § 2201, or Article III, section 2 of the United States Constitution, their allegations that the Act inhibited them in the exercise of their First Amendment freedoms could not justify review of the entire statutory scheme.

The District Court interpreted this Court's decision in *Dombrowski v. Pfister,* 380 U.S. 479 (1965), as justifying its review of section 11401 (1), (2), (4), and (5). *Harris v. Younger, supra* 512. *Dombrowski* recognizes an exception to the usual rules governing standing: when a statute governing conduct in the area of the First Amendment is challenged on grounds of overbreadth the challenger need not demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity. *Id.* at 486-487. Dombrowski does authorize review of *the specific statutory provision attacked* irrespective of its application to the facts presented; *Dombrowski* does not commission federal courts to conduct search and destroy missions in state penal codes.

Our Legislature declared its intention in Penal Code section 11402 that should any provision of the Criminal Syndicalism Act be held unconstitutional, remaining portions of the Act should stand. When by declining to abstain, a federal court denies state courts the proper opportunity to construe a state statute in a manner consistent with the Constitution, it is particularly appropriate for the federal court to limit its review to those specific provisions of the state statutory scheme properly before it. To do otherwise unnecessarily taxes the delicate federal-state relationship. The District Court acted beyond its power by extending its review to independent subdivisions (1), (2), (4) and (5) of Penal Code section 11401; only section 11401 (3) was properly before the court.

We ask only that federal courts approach our Syndicalism Act in the manner in which this Court construed the Smith Act, 18 U.S.C. § 2385: by limiting review to those provisions necessarily at issue. See *Dennis v. United States,* 341 U.S. 494 (1951); *Yates v. United States,* 354 U.S. 298 (1957); *Scales v. United States,* 367 U.S. 203 (1961).

Mr. Justice Frankfurter, in *Communist Party v. Subversive Activities Control Board,* 367 U.S. 1, 71-72 (1961), summarized our position with enviable lucidity:

> "Merely potential impairment of constitutional rights under a statute does not of itself create a justiciable controversy in which the nature and extent of those rights may be litigated. *United Public Workers v. Mitchell,* 330 U.S. 75; *International Longshoremen's Union v. Boyd,* 347 U.S.

222. Even where some of the provisions of a comprehensive legislative enactment are ripe for adjudication, portions of the enactment not immediately involved are not thereby thrown open for a judicial determination of constitutionality. 'Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case.' *Watson v. Buck*, 313 U.S. 387, 402. No rule of practice of this Court is better settled than 'never to anticipate a question of constitutional law in advance of the necessity of deciding it.'"

---

## III

**THE CALIFORNIA CRIMINAL SYNDICALISM ACT, INSOFAR AS IT DENOUNCES CONDUCT DIRECTED TOWARD STATE AND MUNICIPAL GOVERNMENTS, HAS NOT BEEN PREEMPTED BY THE SMITH ACT.**

In their complaint below appellees contended that the California Criminal Syndicalism Act has been preempted by subsequently enacted federal anti-sedition legislation. The District Court avoided this question by erroneously ruling the Syndicalism Act unconstitutional. Confident that this error now will be remedied we set forth our argument on the implied preemption issue.

The Smith Act, 18 U.S.C. § 2385, in 1940, made advocacy of the forceful overthrow of "the government of the United States or the government of any State, Territory, District or Possession thereof, or

the government of any political subdivision therein . . ." a federal crime.

In *Pennsylvania v. Nelson*, 350 U.S. 497 (1956), the Pennsylvania Sedition Act was before this Court. That statute specifically condemned seditious conduct directed toward the federal government; the accused's conduct was, in fact, directed wholly at the overthrow of the federal government. The Court held that the Smith Act, by implication, "supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct." *Id.* at 499.

While the Court carefully noted that its decision did not limit the right of a State to protect itself at any time against sabotage or attempted violence of all kinds, *id.* at 500, the broad statement that "Congress has intended to occupy the field of sedition . . . ," *id.* at 504,[4] was misunderstood. Mr. Justice Reed, dissenting, emphasized that the field occupied was limited to sedition against the *federal government*. *Id.* at 513. Nevertheless, some, narrowly fastening upon the broad language quoted above, concluded that *Nelson* held that the Smith Act preempted the field of sedition against *all government*, thereby superseding state statutes protecting state and municipal governments.

This misconception, shared by appellees, was laid to rest in *Uphaus v. Wyman*, 360 U.S. 72 (1959),

---

[4] *Cf.* 18 U.S.C. § 3231:

"• • •

"Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof."

and again in *DeGregory v. New Hampshire*, 383 U.S. 825 (1966). *Uphaus* clarified *Nelson:*

> "In *Nelson* itself we said that the 'precise holding of the court . . . is that the Smith Act . . . which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act which proscribed the *same conduct.*' . . . The opinion made clear that a State could proceed with prosecutions for sedition against the State itself. . . . Nor did our opinion in *Nelson* hold that the Smith Act had proscribed state activity in protection of itself either from actual or threatened 'sabotage or attempted violence of all kinds.' In footnote 8 of the opinion it is pointed out that the State had full power to deal with internal civil disturbances. Thus . . . the subversive instigation of riots and a host of other subjects directly affecting state security furnish grist for the State's legislative mill." *Uphaus v. Wyman, supra,* 76-77.

Unlike the Pennsylvania Sedition Act, the California Criminal Syndicalism Act does not in explicit terms purport to govern seditious conduct directed at the national government. At all events, after *Uphaus* it cannot be seriously contended that our Syndicalism Act, insofar as it proscribes conduct directed at local governments, is preempted by the Smith Act.[5]

Appellees preemption argument is defective for these additional reasons. The Syndicalism Act, which

---

[5]*Accord,* Comment, 73 Harv. L. Rev. 126, 163 (1959); Note, 33 So. C.L.R. 92, 93 (1959); Note, 28 Geo. Wash. L. Rev. 457 (1960); Note, 38 Texas L. Rev. 330 (1960).

is not purely an anti-sedition measure, prohibits acts not made criminal by the Smith Act: advocacy of violent acts directed at accomplishing a change in industrial ownership; advocacy of sabotage, commission of crimes, and unlawful acts of terrorism. The Smith Act was intended to prevent an organized violent revolution overthrowing existing government; the Syndicalism Act aimed to prevent individual sporadic acts of violence committed by anarchist or revolutionary elements, organized or unorganized. Since the federal and California statutes coincide neither in purpose nor scope there is no basis for finding in the Smith Act a congressional intent to preempt the California Syndicalism Act.

A determination that a state statute intrudes upon an area of exclusive federal jurisdiction renders the state laws inoperative, not invalid. The state legislation is unenforceable only to the extent that it conflicts or coincides with federal legislation. Provisions which neither contravene nor duplicate federal law remain valid and operative. The California Syndicalism Act condemns acts not permitted or prohibited by the Smith Act. Therefore, whether *Nelson* is interpreted as in *Uphaus,* or as by appellees, the Syndicalism Act contains vital provisions under which appellee Harris may be prosecuted.

## IV

### THE FEDERAL ANTI-INJUNCTION STATUTE, 28 U.S.C. § 2283, BARRED THE DISTRICT COURT FROM ENJOINING STATE COURT CRIMINAL PROCEEDINGS PENDING AGAINST APPELLEE HARRIS.

Title 28 of the United States Code, section 2283, declares:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

While not jurisdictional, section 2283 is certainly a positive congressional mandate and limitation on the equity powers of District Courts. See *Smith v. Apple,* 264 U.S. 274, 278-279 (1924). *Accord, Baines v. City of Danville,* 337 F.2d 579, 593 (4th Cir. 1964), *cert. denied,* 381 U.S. 939 (1965) "The prohibition of § 2283 is but continuing evidence of confidence in state courts, reinforced by a desire to avoid direct conflict between state and federal courts." *Amalgamated Clothing Workers v. Richman Bros. Co.,* 348 U.S. 511, 518 (1955). *Cf. Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.,* 309 U.S. 4, 9 (1940).

Despite this Court's admonition that "the prohibition is not to be whittled away by judicial improvisation," *Amalgamated Clothing Workers v. Richman Bros. Co., supra,* 515, the District Court, without discussing the fundamental question of the applicability of section 2283, enjoined appellant Younger "from further prosecution of the currently pending

action against plaintiff Harris. . . ." *Harris v. Younger,* 281 F.Supp. 507, 517 (C.D. Cal. 1968).

This injunction plainly was not necessary in aid of the District Court's jurisdiction, nor to protect or effectuate its judgments. The order was proper only if expressly authorized by Act of Congress.

Plaintiffs proceeded under 42 U.S.C. § 1983. *Harris v. Younger, supra,* 509. "[T]he Civil Rights Act . . . creates a federal cause of action but with no suggestion, explicit or implicit, that appropriate relief shall include an injunction which another Act of Congress forbids." *Baines v. City of Danville, supra,* 589.[6]

In *Baines,* the United States Court of Appeals for the Fourth Circuit, sitting en banc, reviewed comprehensively the history of the anti-injunction statute. It was noted that this Court

> "has consistently applied the statute, or the underlying and closely related principles of comity to foreclose interference by the lower federal courts with state court proceedings involving asserted deprivations of civil rights." *Id.* at 588.

Indeed, this Court has been disposed to construe strictly section 2283. See *Toucey v. New York Life Insurance Co.,* 314 U.S. 118 (1941); *Amalgamated Clothing Workers v. Richman Bros. Co.,* 348 U.S. 511 (1955). Strict construction is proper given the

---

[6]Whether section 1983 constitutes an exception to section 2283 was a question left unresolved in *Dombrowski v. Pfister,* 380 U.S. 479, 484 n.2 (1965), and in *Cameron v. Johnson,* 390 U.S. 611, 613 n.3 (1968). *Cf. City of Greenwood v. Peacock,* 384 U.S. 808, 829 (1966).

coincidence of the congressional command and judicial principles of equity and comity, and the policy of preventing needless friction between state and federal courts.

In accord with *Baines* are *Goss v. State of Illinois,* 312 F.2d 257 (7th Cir. 1963); *Smith v. Village of Lansing,* 241 F.2d 856 (7th Cir. 1957); and *Sexton v. Barry,* 233 F.2d 220 (6th Cir.), *cert. denied,* 352 U.S. 870 (1956).

Contra is *Cooper v. Hutchinson,* 184 F.2d 119 (3rd Cir. 1950). Since the Third Circuit did not reveal its reasoning in *Cooper,* only its holding has been challenged.

> "[I]f the principle in *Cooper* were allowed to prevail, it could lead to frequent disruption of state criminal proceedings. Every question of procedural due process might provide a basis for delay of state administration of justice. Therefore, if Congress meant to allow federal injunctions in such cases, it would seem desirable to require it to express its meaning more clearly than in the Civil Rights Acts." Note, 74 Harv. L. Rev. 726, 738 (1961). *Accord,* Note, 78 Harv. L. Rev. 1045, 1050-1051 (1965).

By clear implication, the American Law Institute has concluded that section 1983 does not constitute an exception to section 2283. The Institute has proposed a statute which "goes beyond present law" to permit an injunction in certain civil rights cases. American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts, § 1372, p. 42, Tent. Draft No. 6 (1968).

We submit that the plain language of section 2283 means what it says and constitutes a positive direction by Congress that an injunction shall not issue in this case. The statutory language may be accorded its intended meaning without denying adequate remedies to plaintiffs suing under the Civil Rights Act, for civil and criminal liability attends deprivation of federally protected rights. See *Monroe v. Pape,* 365 U.S. 167 (1961); *United States v. Guest,* 383 U.S. 745 (1966).

It is, moreover, not altogether clear that the injunction forbidden by section 2283 would accomplish more than a declaratory judgment pronouncing a state statute invalid. In *Ware v. Nichols,* 266 F.Supp. 564, 569 (N.D. Miss. 1967), the District Court safely assumed that

> "our declaration that the Criminal Syndicalism Act is unconstitutional is appropriate relief without the necessity of the court's issuing an injunction. We may assume that the state and county officials will withhold any action to enforce the Act, until a final judgment is rendered."

Should the disposition of remaining issues not moot this question, as occurred in *Dombrowski v. Pfister,* 380 U.S. 479, 484 n. 2 (1965), and in *Cameron v. Johnson,* 390 U.S. 611, 613 n. 3 (1968), we urge the Court to hold that by virtue of 28 U.S.C. § 2283, the District Court was barred from enjoining the pending state criminal prosecution of appellee Harris. We ask that the Court adhere to the view expressed in *Stefanelli v. Minard,* 342 U.S. 117, 120 (1951):

"The maxim that equity will not enjoin a criminal prosecution summarizes centuries of weighty experience in Anglo-American law. It is impressively reinforced when not merely the relations between coordinate courts but between coordinate political authorities are in issue. The special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law, has been an historic concern of congressional enactment, see, *e.g.*, 28 U.S.C. §§ 1341, 1342, 2283, 2284(5)." And see *Hill v. Martin,* 296 U.S. 393, 403 (1935).

---

## CONCLUSION

For the stated reasons we respectfully urge that the judgment below declaring the Criminal Syndicalism Act unconstitutional on its face be reversed and that the injunction restraining appellant Younger from proceeding with the criminal prosecution pending against appellee Harris be dissolved.

THOMAS C. LYNCH,
Attorney General of the State of California,
ALBERT W. HARRIS, JR.,
Assistant Attorney General of the State of California,
CLIFFORD K. THOMPSON, JR.,
Deputy Attorney General of the State of California,
EVELLE J. YOUNGER,
District Attorney of the County of Los Angeles,
DONALD A. MUSICH,
Deputy District Attorney of the County of Los Angeles,
*Attorneys for Appellant.*

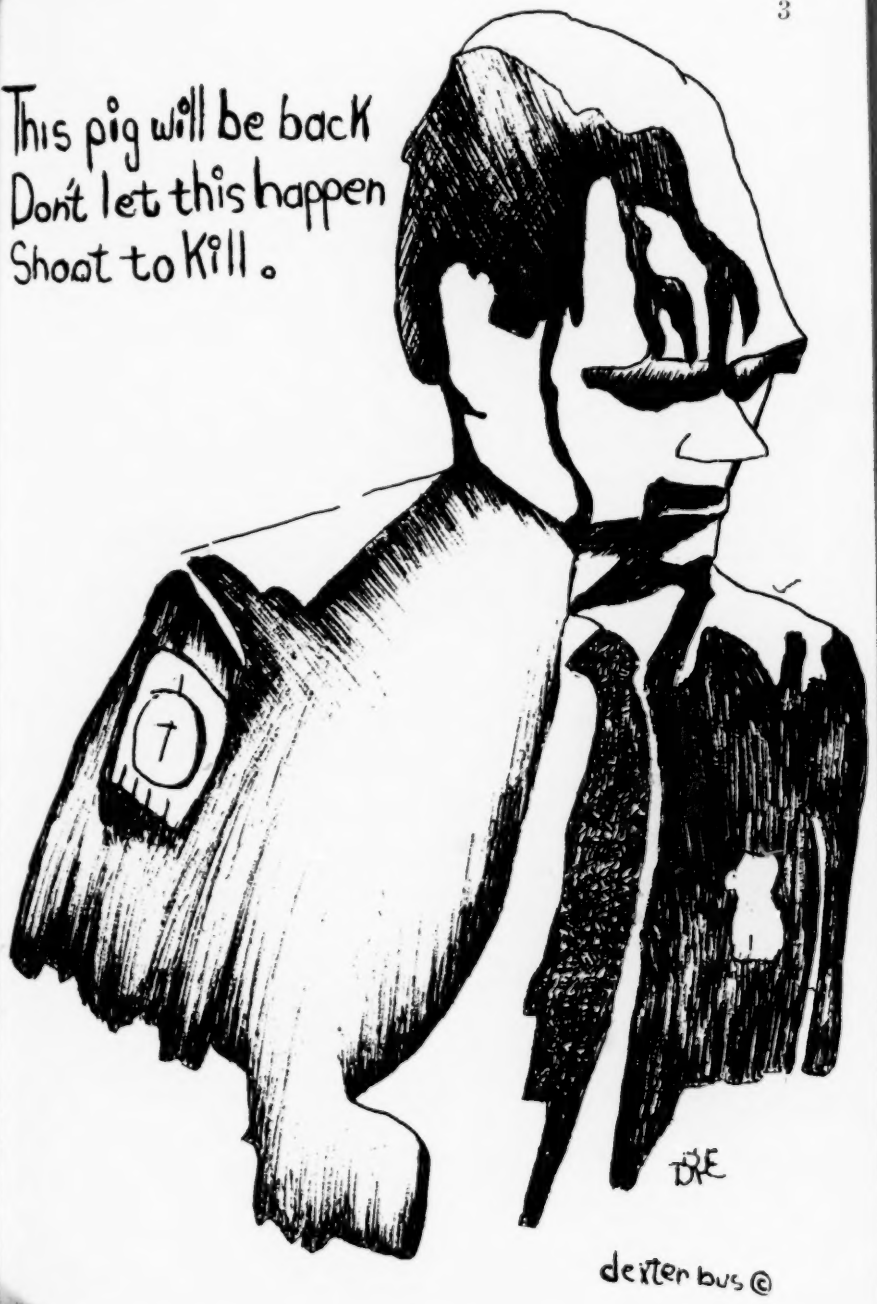
**(Appendix Follows)**

# WANTED DEAD FOR MURDER

## S.F. PIG MICHAEL O'BRIEN

4785 - 18th. STREET

SAN FRANCISCO, CALIF.


This pig will be back
Don't let this happen
Shoot to Kill.
dexter bus ©

*From the Desk of the*

# COMMANDER

## WHEN THEY BURN OUR FLAG ....IT'S TIME FOR VIOLENCE

No nation in history which has tolerated disrespect for its flag and institutions has ever survived. Today, arrogant Communists, Jews, niggers and assorted degenerates, posing as lovers of "peace", are not only parading in our streets with enemy, Viet Cong flags, but openly burning our American flag.

As a young Navy fighter pilot out in the Pacific during World War II, at Guadalcanal, Guam, and other outposts, I remember the way I wept with deep emotion at the mere sight of the stars and stripes being hoisted once more into the sky, after we fought for and won those islands.

How any American can now tolerate the arrogant traitors who hold that beautiful banner up and burn it in public, is more than I can understand!

This supine toleration of enemy flags in our streets, while they burn Old Glory, cannot be allowed much longer before the process becomes irreversable. If our people once lose the fire of love of country and intolerance of disrespect and treason toward that country, we will soon have

# TERRORISM

## *the only answer to*

# TERRORISM

For the last 10 years, nigger mobs have been terrorizing White people. Niggers have been attacking our women in the streets, in subways, in offices--even in church. Our kids in school are shaken down by nigger bullies. Niggers tie up traffic. Niggers stop construction projects. Niggers block the doorways to businesses, urinate on restaurant tables and use their filthy language in front of our women and children. Now they're openly arming and drilling as private armies. The cover of Life magazine, recently, showed a herd of these black apes drilling in military formation.

The same crew of Black terrorists (the Black Panthers) invaded the California legislature with loaded shotguns, rifles and revolvers. They got away with it.

Once before in America during "reconstruction", these arrogant Blacks got too big for their breeches and terrorized the U. S. South.

The Whites took it only so long.

Then they rose up and STOPPED it.

They didn't stop it with petitions, talk, preaching or the Constitution.

They were being terrorized, not talked about or written about.

They stopped it by SUPERIOR terror.

In those days, niggers were fresh from the jungles. Almost all of them believed in hants and voodoo.

So our grandaddies put on white sheets, hoods with eye-slits, and went out with rope, whip and gun. It scared the stupid Black animals out of their dim wits.

Within a matter of months, they had stopped the nigger attacks, bullying and rapes of Southern women.

But that was a hundred years ago.

Try putting on a sheet and marching down the main street of the nigger section of Detroit today. Or try the bed-sheet bit in the jig section of Watts, Southside Chicago, or any of the big city nigger-towns. A bed-sheet in Harlem is a JOKE.

AFTER the niggers finish laughing, they will tear off the sheets--and the arms and legs of the wearer.

Putting on a suit of knightly armor was great stuff, in the middle ages. But anybody who showed up with a suit of knight's armor in a

## WHAT MUST WE DO NOW?

### AN ARGUMENT FOR SABOTAGE AS THE NEXT LOGICAL STEP TOWARD OBSTRUCTION AND DISRUPTION OF THE U. S. WAR MACHINE

#### Old Assumptions Exposed

The history of the movement of opposition to the war in Vietnam is the history of the radicalization of an ever-increasing number of white middle-class Americans. These Americans have only recently come to understand clearly what American blacks and oppressed peoples abroad from Vietnam to South Africa, from Angola to Venezuela, have known for a much longer time: that the U.S. Government's rhetoric concerning freedom and democracy is merely a facade, a part of a desperate attempt to make oppression appear legitimate. Nowhere have the new middle-class radicals seen more clearly the degree to which they had formerly been mistaken about their government and the forces that control it, than in their early efforts to bring about a change in US policy in Vietnam.

They assumed, for example, that—even though Congress as would-be "representatives of the people" had acquiesced in the Administration's use of the Gulf of Tonkin Resolution to circumvent Congress' constitutional powers—public protest would both bring Congress to reclaim its prerogatives *and* show the Administration the speciousness and the brutal perverseness of its logic regarding Vietnam. These white middle-class Americans made the further assumption (completely justified, incidentally, by what every school child learns about the *theory* of American democracy) that our leaders—being decent and reasonable men—would be compelled by the overwhelming validity of the case presented by such public outcry and they would decide to end what obviously was and is a criminal intervention in Vietnam. The letters to Congressmen and to the President, the petitions, the vigils, and the picket lines were all based on the assumption by white middle-class Americans that our government works as we are told it works.

To be sure, there were radicals at the first SDS organized anti-Vietnam war protest in Washington in 1965, who thought of that demonstration in a way quite different from most of us (many of us believed it might cause those in power to re-examine their basic policy regarding Vietnam). These radicals knew that Americans had first to learn how their government works *in fact*, before they could come to realize the necessity of radical action to change it.

They saw demonstrations then and all subsequent demonstrations including the gigantic rally of April 15, 1967, as part of the vital processes of educating the rest of us to the de facto workings of Uncle Sam and of helping us to organize to decide on more meaningful ways of reversing America's present policy of opposition to struggles for national liberation.

### Protest Answered By Escalation

The escalations in Vietnam from late 1965 right down to the stepped up bombing of the North after the massive April 15th rally have continually come in the face of and in spite of growing opposition to the war among every segment of American society. What was once considered a time-worn left-wing slur—that the American President and the Congress are answerable to a relatively small but powerful combination of business, industrial and military interests—has become all too painfully obvious to those of us who now consider ourselves radicals. At the same time that we have witnessed the irrelevancy of the old liberal civil rights movement to affect a fundamental change in the basic position of black Americans, the impact of our own powerlessness has crashed down upon us.

The radical politics of S.N.C.C. and of white groups like S.D.S.—though they are in a real sense very different—nevertheless show a common awareness that "the system" is not set up to allow radical change within itself and through its own mechanisms. The system is perfectly capable of co-opting a number of specific radical programs—as it did in destroying the radical movement during the 1930's—but it is incapable of changing itself. Meaningful change must come from without through grassroots organizations which challenge the legitimacy of, and ultimately the existence of, present political institutions.

### Non-Violent Protest As An Organizing Tool

The passive, non-violent demonstrations against the Johnson Administration's war in Vietnam, as well as the silent vigils, the non-obstructive sit-ins, and other essentially white middle-class forms of protest have—over the past three years—been important organizing tools. They continue to be important for the very simple reason that a great many basically non-political individuals—who find themselves dissatisfied with the Vietnam war and who are anxious to work to bring about U.S. withdrawal—will join a

picket line as a first step, but would never act if the only type of planned public protest risked a violent encounter with police, and arrest. That this is true is clear to every radical anti-war organizer in the country who is in tune with political reality, whether he is on or off campus. As our actions move "from protest to resistance" and from symbolic confrontation to obstruction, we must not neglect to keep open the possibilities of protest for the "not-yet-radical."

### The Important Questions

Nevertheless it should remain clear to us that picket lines and marches will not bring about U.S. withdrawal from Vietnam. In retrospect, for example, the massive April 15th demonstration in New York was at best a radicalizing experience for its 300-400,000 participants and its sympathizers across the country. It showed many of them how completely unresponsive the Johnson Administration was, and is, to "liberal protest"; but otherwise it served only to soothe a few consciences: "Well, we've done what we could —guess it's hopeless."

In short, as far as radicals are concerned the important questions remain what they have always been: In our common struggle with the people of Vietnam to prevent the U.S. government from stifling their liberation movement, how do we make the cost for the U.S. to continue its aggression too high? How do we obstruct the system here at home to the point where continuing the war becomes too difficult, or even impossible?

### Draft Resistance & Campus Confrontations

The answer of student radicals to the challenge of jamming the US war machine has centered upon two main areas: (1) draft resistance and (2) on-campus confrontations with military and war-industry recruiters. Both programs have been aimed at depriving the war machine (including holders of important defense contracts such as Dow) of young men.

It is far easier to measure the immediate results of the draft resistance program than the results of anti-military recruiter and anti-Dow-type confrontations. That is to say, we know approximately how many young men have refused induction. We know that more than 1000 young men publicly severed all connections with Selective Service by returning their draft cards on October

16th. These matters involve numerically representable "facts." On the other hand, we may never know what effect demonstrations against Dow have had in influencing students not to seek employment with Dow. Similarly there is no way by which we will ever be able to determine to what extent denying Army, Navy, Marine and Air Force recruiters access to some university campuses has made it more difficult for the military to meet its manpower needs.

The important point should be made, of course, that regardless of the extent to which demonstrations affect military or war industry recruiting on campuses, the demonstrations themselves serve as vital actions around which to develop radical campus programs for asserting the right of students to a major voice in deciding campus policies. This is an indisputable gain for the radical movement. This having been said, however, what assessment can we make of the campus anti-recruitment strategy at the beginning of 1968?

## Davidson On Campus Confrontations

Carl Davidson, SDS interorganizational secretary, writing in the November 13th issue of *New Left Notes* made these observations on the direction of the evolving strategy of the campus confrontations:

> . . . While the anti-recruiter sit-ins last Spring were primarily acts of moral witness and political protest, an increasing number of the sit-ins this Fall displayed the quality of Tactical Political Resistance. Their purpose was the disruption and obstruction of certain events and actions BY WHATEVER MEANS NECESSARY. Politically, the occurrence of this kind of activity implies the prior dissolution of whatever legitimacy and authority the institutions being resisted may have formerly had. This exceedingly important process of de sanctification points to the weakening of the existing institutions of power as well as the growing revolutionary potential of those forces opposing that power.

Davidson goes on to write:

> . . . We saw the possibility of engaging in a common struggle with the liberation movements of the world by confronting the on-campus sector of the same military apparatus oppressing them. Our strategy became clear: the disruption, dislocation

> and destruction of the military's access to the manpower intelligence, or resources of our universities. Our tactics: a varied series of local confrontations with campus military and para-military operations, hopefully escalating into student strikes, culminating in a national student strike, in the Spring of '68 against the military's presence on campus and against the war in Vietnam. This was by no means seen as our only program, even by the campus. But it was a major effort and experiment in a strategy of institutional resistance.

This analysis by Davidson is interesting and valuable in that it interprets the significance and direction of the revolutionary confrontations at the Universities of Wisconsin and Illinois, at Brooklyn, Oberlin and California State Colleges, and at other institutions. It gives some perspective to the opportunities for strengthening the radical movement at universities across the country.

### Rhetoric and Reality

Nevertheless our thoughts must always return to Vietnam. Is this not where the most important war of liberation in progress today is taking place? What will a strong radical movement with even tens of thousands of militant activists have accomplished if it will have allowed the US government to have so decimated the country of Vietnam as to have succeeded in imposing a permanent military rule on that country in order to protect a string of military bases on the Asian mainland?

When Davidson writes, "we saw the possibility of engaging in a common struggle with the liberation movements of the world by confronting the on-campus sector of the same military apparatus oppressing them", this sounds very pretentious and shortsighted indeed. For in fact is it not transparently, even painfully, obvious that, even if students at *every* university in the United States prevented military and war industry representatives from recruiting on their campuses, this would not and could not materially affect the manpower procurement program of the Armed Forces? Recruiters would still interview many students off-campus and the Selective Service would still send its notices of induction. And, needless to say, we have not even mentioned the recruitment or the conscription of non-students. In short, the campus anti-recruiter campaign, while remaining a valuable tool for the radicalization of universities, cannot and will not affect the manpower supply of the US Army. For us to pretend that it may is nonsense.

## Tactics Fit The Strategy, But . . .

It should be said about the anti-recruiter confrontations that they have been and will continue to be excellent examples of the success of a *strategy* (the denial to the military of direct access to university students and resources) when a commensurate and appropriate *tactic* (local confrontations, ranging in degree of militancy) is employed to implement the strategy. Radical campus organizers who adapt to their peculiar local situations can anticipate continuing success in their program to keep the war machine off campuses.

The trouble with the strategy of denying the military and the war industries access to compuses is that it is too limited, too narrow. The series of confrontations have been allowed to "succeed"—i.e., they have accomplished their immediate aims and have not been totally and summarily crushed by mass arrests and lengthy jail terms—primarily because they have *not* effectively interfered with the manpower procurement program of either the military or the war industries which recruit on campuses. The procurement programs of both can be effectively carried on off-campus. Thus, when Davidson speaks of the purpose of campus confrontations as being "the disruption and obstruction of certain events BY WHATEVER MEANS NECESSARY," the "certain events" (i.e., campus recruiting) are largely irrelevant to the US government's continued prosecution of the war *as* it sees fit, *for as long as* it sees fit.

## A Correct Analysis

The induction center confrontations (of which the Pentagon was basically a large-scale variation) represent a perfectly correct analysis of the situation as regards military manpower procurement and its relation to the prosecution of the war. They demonstrate an awareness that the campus confrontations—however valuable—do not really cut sharply into the workings of Selective Service. Similarly they show a resignation to the fact that programs to encourage draft resistance—however valuable—when viewed realistically cannot hope to cut into the Army's manpower needs; their primary effect on the anti-war movement is to reduce its potency by sending its bravest and best to jail.

What the "induction center confrontation" recommends that we do about the situation is this: broaden the strategy of trying to disrupt the manpower procurement program by attempting to shut down the actual apparatus which inducts young men into the Army,

i.e., shut down the military induction centers. This, of course, is what Oakland was all about.

### Right Strategy—Wrong Tactics

Nevertheless, although Oakland and New York City were successful confrontations for a number of other reasons, we learned from them that the weakness of the broadened *strategy* of induction center confrontation is that so far *tactics* have not kept pace with the new strategy. People at Oakland—fairly successfully for a time—and people in New York—not so successfully—tried to shut down their induction centers by transposing the same tactics that had reaped fairly satisfactory results on college campuses, to an entirely different situation. They somehow concluded that, because they had been allowed to keep Dow and the Marine Corps off their campuses with masses of unarmed people, they would be able to accomplish the much more signfiicant task of actually stopping the army's induction of draftees and recruits by transporting the same crowds of unarmed, white middle-class people to city streets surrounding induction centers, facing police (armed to the teeth and with a free hand to make arrests), and then merely "obstructing."

Oakland and New York should have made it apparent to everyone by now that the authorities will not allow the broadened strategy to succeed as long as tactics leave those attempting to disrupt induction centers—or other arms of Selective Service or the military itself—so helpless and vulnerable. Mass arrests and stiffer penalties will insure that, as this type of campus-tactic-transported-downtown *appears* to begin to succeed (i.e., thousands of people assemble to close down induction centers) it will actually make its own success impossible, because it will invite mass arrests and fines and jail sentences which will have the counterproductive effect of crippling the anti-war movement in given localities for weeks or months at a time.

### What *Do* We Do Now?

All this having been said and the movement having arrived where it presently "is at," there are likely to be two immediate responses to the obvious question: "Well then, what *do* we do now?"

First, a great many white middle-class people, who *think* they are radicals, are tempted to conclude that there is nothing left to

do; that all possible radical action has been tried in an effort to bring about US withdrawal—all to no avail; that the present level of disruption should simply be maintained—even though it be doomed to failure—in order to enable "responsible, liberal peace candidates" to move further left in 1968, while selling the electorate on a "moderate" label. In other words, "let's be realistic" and see how the radical movement can aid a Kennedy or a McCarthy to get nominated and then elected on a moderate peace platform.

Secondly, many of us are tempted to abandon our cool and to throw ourselves into prison through suicide charges at induction centers with a desperate cry of moral outrage and frustration: "We know it's hopeless, but goddamnit, we'll die trying to stop this war."

## We Are Serious—Or We Are Not

These immediate responses are understandable in the sense that many of us are so totally frustrated at the apparent failure of our present tactics aimed at disruption, that we conclude that the whole strategy of disruption is hopeless. However, that such responses are understandable, excuses neither their shortsightedness nor the moral bankruptcy which they imply. Either we are still seriously and totally dedicated to aiding the Vietnamese war of national liberation, or we are not! If we are, we have a moral obligation to look beyond our present failings in order to formulate tactics which can realize a serious degree of disruption of the US war machine. If we are not—and we all suspect that (as in any movement) many are along just for the ride—then we should frankly admit that we favor liberal action and work openly through either of the two major parties or through a third party to get a "peace candidate" elected President. (For such people to get out of the radical movement could only help the movement.)

The tactics exemplified at Oakland and at New York, which were aimed at a strategy of *meaningful obstructions*—that is, for example, induction centers as opposed to campus recruiters—failed because they gave the government the choice as to whether or not it would *allow* masses of people to march down the street in broad daylight and to close down the centers. The government obviously would not agree to this. It was and is quite ready, quite willing, and quite able to disperse and/or arrest as many people as, realistically speaking, can be assembled at one induction center at a given time. (Even were this not the case, it is ludicrous to think that closing down one or two induction centers in the entire United

States for a matter of hours could really hurt the Selective Service's manpower program.) As we have said, this accomplishes little of lasting significance and is dangerous in that resultant stays in jail seriously deprive the movement of manpower and money.

### One Man—One Induction Center

On the other hand, is there anyone who doubts that a small homemade incendiary device with a timing mechanism planted in a broom closet at the Oakland induction center could result in fire and smoke damage to the entire building, thus making it unusable for weeks or months? One person with a fair knowledge of chemistry could build such a device easily and cheaply and could plant it with almost no chance of being detected. Set to go off in the early morning hours (after 3:00 A.M. or so) such a device would do what the Oakland and New York demonstrations set out to do with several thousand people. It would not only close down the induction center—it would make the building itself useless for a period of weeks. There would, moreover, be no police violence and no mass arrests—but also no induction center.

For draft boards which are accessible (that is, not in the upper floors of modern concrete and steel buildings in the middle of large cities—but rather in small cities and towns) the same type delayed action incendiary device would work equally well. Timed for the early morning hours in order to confine damage to property, as opposed to employees (although small devices could be set off during board hours with little risk to individuals), an incendiary at a draft board would create havoc for days and weeks after. The workings of that board would be seriously disrupted. In instances where not all records are kept in steel file cabinets, documents of vital importance could be destroyed. The ultimate success in burning a local draft board would involve actual destruction of most, if not all, Selective Service files. This would shut down the induction process for that board until all men registered with the board could be re-registered.

### Other Ways To Put The SS Out Of Business

Needless to say, action against induction centers and local boards should not be restricted to "big" actions (such as delayed action incendiary devices) or nothing. Especially in smaller towns and villages where many draft boards are relatively old frame structures and where police patrols are spotty, simple molotov cocktails

can be thrown through windows from side streets resulting in the same extensive damage witnessed in Newark and in Detroit, but without the arrests. Furthermore, simply continually breaking windows and strewing parking lots with broken glass and bent carpet tacks are relatively minor but effective methods of harassing Selective Service employees. Likewise, any of a number of minor actions directed against the automobiles of draft board members (such as slashing tires, breaking windows, etc.) can be effective parts of a pattern which, as it becomes widespread, will spell first inconvenience, later harassment, but finally fear for all Americans who continue to act as tools of the Selective Service System.

Already we can see two tactical foci for a successful strategy of obstructing the replenishing of US Army manpower: (1) Destruction of buildings and property which are used for the process of induction and (2) indirect harassment directed against property of individuals involved in Selective Service work, in hopes of discouraging some from continuing their employment with Selective Service.

### Total Secrecy, Total Decentralization

Mentioned above are only a few very obvious examples of tactics for achieving the results we must achieve if our talk of aiding the Vietnamese people is not to degenerate into mere radical rhetoric or liberal style electioneering. Obviously, a bit of thinking would reveal a whole range of more violent, and also less-violent, tactics for destroying the property and harrassing the employees of Selective Service. What the radical movement needs now is a discussion regarding selection of targets and the anticipated effects of various tactics. This is not to say that this level of violent obstruction can be discussed publicly by organizations *as organizations*. Of course, it cannot. The success of such a program, which really *can* obstruct Selective Service, depends on total secrecy and total decentralization. At most a bare handful of people in a city here or in a community there should be aware of the actions of others in the same city or community. If someone is arrested for firebombing a local board in Boston, he cannot be brutalized by the police into revealing operations in New York, in Chicago, or in Sacramento. He simply doesn't know who those other individuals are. His only link with them is their link with him: the daily newspapers in which each anonymously reads and studies carefully the tactics and degree of success of the others. Similarly, all actions undertaken by individuals or by two's or three's should be entirely inde-

pendent of and separate from local radical groups (such as Resistance groups or SDS). That is to say, John X participates in SDS on campus, but never mentions his other activities against Selective Service to the membership of SDS. That he is protecting himself against arrest as well as keeping SDS "above-board" and aiming at an ever-stronger campus base, goes without saying.

### Minimize Risks—Stay Out Of Jail

What about the possibility of arrests? What are the chances of arrest and the possible sentences for arson against a US government building, or even for slashing the tires of a member of a local draft board? These questions should be seriously faced by any individual or small groups of individuals which undertakes meaningful direct action to aid the Vietnamese people against US aggression. But just as one of the main practical considerations favoring tactics of sabotage (as opposed to the Oakland-type action) is the *lessened* chance of the movement being decimated by arrests, the ultimate success of a program of sabotage demands that no attempts be made as acts of desperation which run a high risk of arrest. Ultimate success demands that if a given action runs even a fair risk of arrest, that it *not be undertaken*. There are enough targets connected with Selective Service—draft boards, induction centers, recruiting boothes—so that a period of "shopping around" will eventually lead to a vulnerable, "safe" target. (Other government agencies and war industries closely linked with the war effort provide additional targets.) The area is staked out for a period of days or weeks, the action is planned, materials are gathered, the target is hit—that's all. Only one person—or at most two or three people—knows of the action. There is no giant web of conspirators to spring leaks. There are, hopefully, no romantic kids involved who have to blabber to some pal or girl friend, "Gee, I just started a gasoline fire through the basement window of a draft board." Individuals who will be committed to this type of direct obstruction of the military will not be glory-seeking idealists. They will most likely be (if they are to be successful) highly motivated, meticulously calculating, and thoroughly dedicated men and women who have analyzed "the dilemma" at the beginning of 1968, and have concluded that this is what has to be done. They will be ordinary students, professors, community workers, nine-to-five office workers, teachers, etc., who lead "normal" lives and who carry on "normal" public and private relationships, but who (perhaps at intervals of 3 to 5 months) will destroy property of Selective Service or will engage in some form of harrassment of its employees. They will

take no great risks—they would rather wait and watch for a b chance. They will understand only too well that if their ac and the actions of others like them across the country are to suc in making recruitment of imperialist forces more difficult, must not be arrested. They must not make mistakes. They r remain *out of jail* in order to be able to strike again and again again.

---

This pamphlet was prepared in Toronto, Canada. It has b distributed to 327 anti-Vietnam war groups across the Un States.

### Incendiary Time Bomb

(Diagram omitted)

A cardboard or iron tube is filled with a mixture consisting of Potassium Clorate and ¼ sugar and is sealed. A glass vial is fil with sulphuric acid and stoppered with paper. To arm the bo insert the vial, stoppered end down, into the tube. The acid w eat through the paper and ignite the potassium chlorate-su mixture.

A good deal of experimentation with small models of this bo should be carried out to determine how long it takes for the s phuric acid to eat through various types of stoppers. In this wa it will be possible to estimate (to within an hour or two) when given incendiary bomb will ignite. (In a given building it is w to place the device near combustible materials, such as paper, et A WARNING: The $KClO_3$ used as an oxidizer in this incendia bomb tends to decompose quite easily and to yield its oxygen to a fuels with which its is mixed. This in turn may result in an u expected, uncontrolled detonation. Therefore, experiment first wi small quantities and familiarize yourself with the reaction, befo attempting to build a larger bomb that will give off a flame h enough to start a major fire when placed near combustible materi in a building.

### Molotov Cocktail

(Diagram omitted)

A bottle (any type of bottle) is filled with ⅔ gasoline and ⅓ oi A fuse (even a rag-type fuse will work) is inserted into the bottl so that it reaches from the bottom of the bottle out through it neck. The bottle is stoppered with cork, paper, or fabric. The fus is lit and, after it begins to burn, the bottle is thrown against th

object which is intended to burn. On breaking, the bottle sprays the gasoline and oil on the objective and the fuse ignites it. The ensuing large flame and small explosion will not endanger the thrower, even though he is close to it. The bottle with its lighted fuse NEVER EXPLODES! This point is stressed to insure the thrower that he is never in any danger.

*Recommended:* Practice with a bottle filled with water, lighting the fuse as though it really contained gasoline. Practice throwing such bottles to develop confidence and accuracy.

In an actual attack on a building, it might be wise to first smash with a brick a window of the room to be hit, then to throw a very fragile bottle through the resulting hole to insure that the bottle shatters inside the building. As soon as the firebomb explodes inside the building, several other fragile bottles of gasoline and oil can be quickly tossed in to feed the flames and to make the fire hotter, thus insuring major damage. Of course, one must know in advance that there is something in the room which will catch fire and burn.

*AS ALWAYS:* Do not attempt this type of action in areas or at times where one can be easily spotted and arrested. Study the set-ups in several different towns for months if necessary, before taking an action. Remember, *we're no good to anyone in jail.* We must do this again and again until it begins to really hurt Selective Service or until the government is forced to station guards on 24-hour duty around all draft board offices, induction centers, and recruiting offices and boothes.

### To Set A Simple Fire

(Diagram omitted)

A lighted cigarette is placed in a book of matches and left on combustible material.

### To Sabotage Automobile Tires

(Diagram omitted)

Spread nails, tacks, etc. on SS parking lots or parking areas at night. Also around tires of members of draft boards. All nails and tacks should be painted black so as not to reflect light, thus making them difficult to spot until *after* a flat.

### To Sabotage Automobile Gas Lines

Pour a little water or sugar into gas tanks.